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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,342	01/14/2002	Sophie Helene Vayrette	05725.1013-00	6740
22852	7590	06/13/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			RAMANA, ANURADHA	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/043,342

Applicant(s)

VAYRETTE, SOPHIE HELENE

Examiner

Anu Ramana

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 13-95 is/are pending in the application.
- 4a) Of the above claim(s) 7, 9, 11, 66 and 68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 10, 13-65, 67 and 69-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/28/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Election/Restrictions***

Applicant's arguments presented in the response filed on September 16, 2004 are persuasive. Accordingly, claims 90-95 are no longer held withdrawn and have been examined in this action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 8, 10, 60-62, 65, 67, 69 and 90-95 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore (US 5,441,355).

Moore discloses a mitt or envelope 132 with two independent thumb portions (140, 144) wherein the first outer surface has a nonwoven fibrous material 24 having a first roughness and the second outer face has a second fibrous material having a second roughness (Figs. 16-18, col. 4, lines 18-54 and col. 6, lines 1-36).

Claims 60-61, 64, 69-72, 78-84 and 89 are rejected under 35 U.S.C. 102(b) as being anticipated by Ginger et al. (US 4,347,931).

Ginger et al. disclose an envelope having a first outer surface with a pile surface (first roughness) and a second surface without a pile (second roughness) wherein the mitt may be provided with finger pieces and a thumb piece and the

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first and/or second surface is impregnated with a cosmetic product (Figs. 1 and 2, col. 3, lines 36-53, col. 4, lines 13-29 and lines 66-68 and col. 5, lines 1-48).

Claims 1-5, 8, 10, 13-18, 23-31, 34-46, 48, 50-55, 57, 60-64, 69-75 and 78-89 are rejected under 35 U.S.C. 102(e) as being anticipated by Gruenbacher et al. (US 6,508,602).

Gruenbacher et al. disclose an applicator with at least one thumb portion having a front surface with corrugations on one surface of the applicator (first roughness) and a second surface without corrugations (second lower roughness) wherein the applicator is made by attaching first and second layers made of nonwoven fibrous material (col. 3, lines 11-42 and lines 53-67, col. 4, lines 1-5, col. 5, lines 41-53, col. 9, lines 8-41, col. 10, lines 39-64, col. 12, lines 61-64 and col. 13, lines 5-67).

The method steps of claims 35-46, 48, 50-55 and 57 are inherently performed when the Gruenbacher et al. applicator is utilized for applying a lotion to a body surface.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-22 and 76-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruenbacher et al., as applied to claims 1 and 60 (US 6,508,602).

Gruenbacher et al. disclose all elements of the claimed invention except for inner and outer layers (forming the inner and outer faces) having a thickness in a range of about 400 micrometers to about 1000 micrometers.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided inner and outer layers having thicknesses in the claimed ranges to form the inner and outer faces in the Gruenbacher et al. envelope, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 19-22 and 76-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruenbacher et al., as applied to claims 1 and 60 (US 6,508,602).

Gruenbacher et al. disclose all elements of the claimed invention except for inner and outer layers (forming the inner and outer faces) having a thickness in a range of about 400 micrometers to about 1000 micrometers.

Although Gruenbacher et al. do not disclose a specific thickness of the inner and outer layers, the thickness of the nonwoven fibrous material used to make articles such as gloves must have an appropriate thickness to ensure properties such as breathability, flexibility and permanence.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide first and second layers having thicknesses in a range 400 micrometers to about 1000 micrometers in the Gruenbacher et al. envelope as a matter of obvious design choice based on the intended use of the device since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 1-2, 4-6, 8, 10, 13-15, 18-29, 34-42, 45-52, 55-59, 65, 67, 75-77 and 90-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginger et al. (US 4,347,931) in view of Strong (US 5,636,406).

Ginger et al. disclose all elements of the claimed invention except for an envelope with two independent thumb portions. See previous discussion for claim 60.

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Strong teaches an applicator pad 10 having at least two opposed thumb portions to enable use of the pad on a right hand or left hand (Fig. 3 and col. 2, lines 54-59).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided two independent thumb portions in the Ginger et al. envelope, as taught by Strong, to allow a user to select the use of the pad on the right or the left hand.

Regarding claims 1, 13-15, 70-72, 75 and 90, although Ginger et al. do not disclose that the second porous layer is made of a nonwoven fibrous material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the second porous layer of a nonwoven fibrous material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claims 19-22 and 76-77, although the combination of Ginger et al. and Strong does not disclose a specific thickness of the outer and inner layers, the thickness of the nonwoven fibrous material or composite used to make articles such as gloves must have an appropriate thickness to ensure properties such as breathability, flexibility and permanence.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide first and second layers forming the inner and outer faces having thicknesses in a range 400 micrometers to about 1000 micrometers in the envelope of the combination of Ginger et al. and Strong as a matter of obvious design choice based on the intended use of the device since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

The method steps of claims 35-42, 44 and 45-49 are rendered obvious by the above discussion.

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### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 60 submitted under "REMARKS" in the response filed on September 16, 2004 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anuradha Ramana*  
June 3, 2005

*Kevin Shaver*  
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